

Legal Services

Procedural Guide for the United States Army Recruiting Command Investigating Officer

The original version of this pamphlet was first published on 1 April 1994.

This UPDATE printing publishes a new Change 2. The strikethrough and underscore method has been used to highlight changed material.

For the Commander:

RICHARD L. TETERS, JR.
Colonel, GS
Chief of Staff

Official:

ROGER H. BALABAN
Director, Information Management

Summary. This pamphlet provides information on how to conduct thorough, impartial, and objective investigations. It explains the basic techniques and procedures of the investigative process.

Applicability. This pamphlet is applicable to anyone appointed to conduct an investigation within the United States Army Recruiting Command.

Impact on New Manning System. This pamphlet does not contain information that affects the New Manning System.

Suggested improvements. The proponent agency of this pamphlet is the Office of the Staff Judge Advocate. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to HQ USAREC

(RCSJA), Fort Knox, KY 40121-2726.

Distribution. Distribution of this pamphlet has been made in accordance with USAREC Pam 25-30, distribution B. This pamphlet is published in the Recruiting Company Operations and Administration UPDATE.

Contents (Listed by paragraph number)

- Purpose • 1
- References • 2
- Explanation of abbreviations • 3
- Mission • 4
- Preparation for duty as an IO • 5
- Preinterview checklist • 6
- Conducting the investigation • 7
- Postinterview checklist • 8
- Preparing your report • 9

Appendixes

- A. References
- B. Examples of Statements and Documentation

1. Purpose

This pamphlet provides information on how to conduct thorough and impartial investigations. It should be used with the prescribing directive under which the investigating officer (IO) was appointed. This guide is designed to explain the basic techniques and procedures of the investigation. If this pamphlet conflicts with the prescribing directive, the prescribing directive will govern.

2. References

For related publications and blank forms see appendix A.

3. Explanation of abbreviations

- a. DEP — Delayed Entry Program
- b. IO — investigating officer
- c. MEPS — Military Entrance Processing Station

- d. RI — recruiting impropriety
- e. ROI — report of investigation
- f. USAREC — United States Army Recruiting Command

4. Mission

The mission of the IO is to conduct a thorough, impartial investigation, determine the facts of the case, and provide the appointing authority with a recommendation which properly applies governing standards, regulations, and laws.

5. Preparation for duty as an IO

Your investigating duties will be an additional duty, but will take priority over your normal duties. Most of the preparation for gathering evidence can take place at your normal duty station. Usually proper advanced planning will allow you to do a thorough investigation and meet the required suspense dates without being away from your principal duties or duty station for an extended period of time. Before you begin to collect evidence you must:

- a. Read the memorandum of appointment and any supporting documentation to ensure you fully understand what the appointing authority wants you to investigate. Informal investigations will be appointed in writing (see fig 1).
- b. Study AR 15-6, the prescribing directive, and this pamphlet. These publications provide guidance on procedures and what is expected in your report of investigation (ROI).
- c. Understand the regulations, policies, and directives which govern the subject area of your investigation. Call the United States Army Recruiting Command (USAREC) proponent if these references need clarification or interpretation.

- d. Define the allegation and determine what evidence would be relevant. This is the who, what, where, when, why, and how of the situation.

- e. Decide what is the best source for the needed evidence. There are three types of evidence: Physical evidence, documentary evidence, and testimonial evidence.

6. Preinterview checklist

Before gathering evidence, ask these questions of yourself:

- a. Have you read the letter of appointment?
- b. Are the allegations clearly stated and understandable?
- c. Have you gathered the required regulations, policy letters, messages, and directives?
- d. Do you understand the elements of proof for the stated allegations (e.g., see USAREC Reg 601-45 and Manual for Courts-Martial)?
- e. Have you consulted with legal counsel?
- f. Have you identified the documentary and/or physical evidence necessary to complete your investigation?
- g. Have you identified the witnesses who must be questioned and ascertained their availability and willingness to provide sworn testimony?
- h. Do you have any possible personal disqualifications to relate to the appointing authority? Examples would be duty relationship, friendship with any witness, or being junior to any soldier whose conduct reasonably may be in issue.
- i. Is an officer or civilian employee senior to you possibly guilty of dereliction of duty, or other violations of law or regulations? If so, report this

*This pamphlet supersedes USAREC Pamphlet 27-65, 16 February 1993.

immediately to the appointing authority.

j. Have you identified who must receive a USAREC Fm 722 (Privacy Act Statement)?

k. Have you identified which witnesses are suspected of criminal offenses, including violation of USAREC regulations, and prepared their DA Form 3881 (Rights Warning Procedure/Waiver Certificate)?

l. Have you prepared to conduct a thorough, impartial, and objective investigation?

m. Will witnesses be interviewed in person?

n. Have you prepared areas of questioning?

o. What order will witnesses be interviewed?

p. Should the complainant be interviewed first?

7. Conducting the investigation

Once you are ready to begin the investigation, the following steps should be taken.

a. Obtain any documentary or physical evidence that is available. In most recruiting impropriety (RI) cases this will include the applicant's residual packet (or processing documents if the applicant has not enlisted) and USAREC Fm 200-C (Prospect Data Record). The processing list, lead refinement list, recruiter mandex, police and/or court checks, and medical records are other documents frequently required during RI investigations. Don't overlook statements previously provided to others by participants such as police reports, letters to commanders, and statements taken at the Military Entrance Processing Stations (MEPS). Examples of documents and interviews required for common allegations are at appendix B. Copies of all documents assisting in substantiating or refuting the allegation will be included as a part of the investigation.

b. Review all documentary evidence and decide what testimonial evidence you need. Identify who you need to talk to and what questions you are going to ask. Decide in what order you will interview witnesses. In most cases the complainant should be interviewed first, and the person against whom allegations have been made should be interviewed last. This ensures that the allegations are investigated thoroughly, and that the person against whom the allegations have been made has an opportunity to refute or explain any adverse evidence. It is essential that you prepare in advance for each witness interview. What do you expect to learn from the witness? What subject areas need to be examined? By making notes in advance about these subject areas, you are less likely to forget an important area during the interview. Writing a list of questions in advance is not recommended. Such interviews tend to become too structured, and logical areas of further questioning are often overlooked or forgotten. A list of topics or subject areas is preferred. A short list of topics helps guide an interview and ensures that each area is examined completely before moving to the next area of questioning.

c. Conduct witness interviews.

(1) Decide the time and place of each witness interview. Coordinate the presence of military

and civilian government employees with their supervisor. Other civilian witnesses are not under any compulsion to provide statements. Therefore, you will need to find a time when it would be convenient for them to meet with you.

(2) If you suspect a soldier of a violation of the Uniform Code of Military Justice (UCMJ) (to include violation of a punitive regulation), you must read the soldier their rights under article 31, UCMJ. To avoid any problems, complete a DA Form 3881 and have the soldier sign it. Do not read rights to witnesses who are not suspected of misconduct, and never to civilian witnesses who are not government employees. If in doubt as to whether it is necessary to read a witness their rights, call the brigade judge advocate for guidance.

(3) USAREC Fm 722 (fig 2) is required for:

(a) any Army personnel (military and civilian) whose performance of duty is suspected to have been negligent, derelict, or otherwise improper; and

(b) any other individual under whose name the report may be filed (e.g., the person whose enlistment processing is in issue or the victim in a misconduct case).

(4) All statements should be sworn. Except in unusual circumstances DA Form 2823 (Sworn Statement) should be used. Most IO find it helpful to have a general discussion with the witness first, then ask specific questions. During the interview the IO should take notes or use a tape recorder. If the conversation is recorded, you must notify the witness of your intention at the beginning of the tape. If you are taping a telephonic conversation, you must obtain the other person's consent. The statements should be typed so they can be easily read. Avoid the temptation to make the written statements very short after an extensive interview. You cannot use something a witness said to support your findings or conclusions if it is not in the written statements.

(5) If one witness contradicts another witness, get each witness to fully clarify their statements. This may require reinterviewing the earlier witness. This ensures that witnesses have an opportunity to explain contradictory statements.

(6) Some things to do when interviewing witnesses:

(a) Take charge of the interview.

(b) Get the witness to explain thoroughly.

(c) Develop the facts completely.

(d) Honor the rights of witnesses.

(e) Be fair.

(f) Be thorough, objective, and discreet.

(g) Consciously consider your demeanor during the interview, for you represent the Army.

(h) Be objective.

(i) Give the witness an opportunity to think.

(j) Check for loose ends. Try to do this before concluding each interview. Check your preparatory notes for the information you expected to gain from the witness and ensure you've exhausted their knowledge of these facts.

(k) Tell the witness not to speak with other

witnesses.

(l) Be complete. Ensure witnesses explain ambiguous terms such as "affair" or "relationship."

(m) Ask witnesses if they know anyone else who should be interviewed.

(7) In summary, each witness should describe in detail the occurrence (i.e., enlistment process, relationship, etc.) and his or her involvement. After this is accomplished, additional questions will most likely be needed to clarify or expand unresolved issues.

(8) Some things not to do when interviewing witnesses:

(a) Browbeat, threaten, or intimidate.

(b) Interview the witness in the presence of anyone else involved in the investigation, including to find leads for further investigation. Minors may need to be interviewed in the presence of the parent, guardian, or with proper consent, the presence of another adult.

(c) Make promises, including promises of confidentiality to any person. Promises of confidentiality will not be made to any person without prior authorization by the USAREC Command Legal Counsel Staff Judge Advocate.

(d) Mislead.

(e) Give advice to the witness.

(f) Give the impression that any specific adverse action will be taken against anyone.

(g) Compromise yourself by drinking alcoholic beverages with the witness.

(h) Lose your temper or patience.

(i) Make snide remarks.

(j) Tell an untruth to get a truth.

(k) Be embarrassed by periods of silence while the witness contemplates a question or an answer.

(l) Ask questions that simply state the conclusion desired or that can be answered "yes" or "no." For example, don't ask an applicant whether they were coerced or pressured by their recruiter. Instead, ask the applicant what their recruiter said or did.

(m) Take two witnesses, such as a mother and applicant, and let them sign the same witness statement.

(n) Use double negatives in your questions.

(o) Talk about your investigation with friends, witnesses, or other people who do not have an official need for the information. Don't tell the person against whom allegations have been made that you will be making certain findings and recommendations. Gossiping about the investigation undermines confidence in the fairness and impartiality of the IO.

8. Postinterview checklist

After gathering evidence, ask these questions of yourself:

a. Who are all the persons identified by the original allegation(s)?

b. Are there additional witnesses identified through your review of documents and/or taking of sworn statements who should be interviewed?

c. Have sworn statements been taken from all witnesses? If not, explain why it is impossible to

do so.

d. For each finding, does the evidence show:

- (1) What happened?
- (2) What suspected events did not occur?
- (3) What laws, regulations, directives, or policies were violated?
- (4) When the events occurred (time and date)?
- (5) Who observed the events?
- (6) Where events took place?
- (7) Who or what caused the events to happen?
- (8) Were any other parties involved, but not initially identified?
- (9) How or why the events occurred?

e. Who are the immediate supervisors, and where were they when the events occurred?

f. Is each witness credible - if not, why not? (Ask yourself whether any witness has an incentive to lie. List the appropriate factors.)

g. Are there any unanswered questions or issues?

h. Is each proposed finding supported by evidence that is both substantial in quantity and of a quality that would convince a reasonable person of the correctness of the finding? This is the preponderance of evidence standard described by AR 15-6, paragraph 3-9b.

9. Preparing your report

a. As an exception to policy DA Form 1574 (Report of Proceedings by Investigating Officer/Board of Officers) will not be used for the Report of Informal Investigations conducted within USAREC unless specifically directed by the appointing authority in the letter of appointment. Informal investigations will be reported using the format at figure 3. Use tab dividers between each enclosure. Be sure to include an index of tabs. If the ROI is over 25 pages, fasten the entire ROI together at the top with a two-hole fastener. An example of a good ROI is at figure 4 and an example of a poor ROI is at figure 5.

b. During your investigation, evaluate the evidence concerning each element of proof for each allegation. Be certain you have obtained the best quality information possible concerning each element of proof. Be sure that you have done everything within reason to establish or refute each allegation.

c. Discussion. You should discuss each piece of evidence in light of the facts and other evidence. If there are inconsistencies, you must attempt to resolve them. Do not ignore contradictions or assume explanations. The IO's main task is to ascertain facts, not conjecture probabilities. When referring to witness statements or other evidence, identify the reference and its location (e.g., statement by SGT _____ (Tab ____)). If necessary, witnesses may have to be reinterviewed.

d. Findings. Apply the preponderance of the evidence standard of proof to the elements of the allegation, reviewing again the regulation defining any misconduct. Findings for each allegation should be that it is either substantiated (proven) or not substantiated (not proven). Not proven

means the truth of the allegation could not be determined or the allegation was determined to be untrue. If you are dealing with negligence rather than deliberate or willful misconduct, you should determine if it is simple negligence or gross negligence. Simple negligence is the failure to act as a reasonably prudent person would have acted under similar circumstances. Gross negligence is an extreme departure from the course of action to be expected of a reasonably prudent person, all circumstances being considered, and accompanied by a reckless, deliberate, or wanton disregard for the foreseeable consequences of the act. After you have determined your findings for each allegation, determine whether you have developed any information which leads you to additional findings concerning the subject matter of your investigation. A systemic problem in this subject area may be discovered, and must be reported, with recommendations.

e. Recommendations. The recommendations must be supported by the findings. If the investigation involves misconduct or RI, the recommendations should include the appropriateness of disciplinary action. This may include recommendations of judicial (courts-martial), nonjudicial (Article 15), administrative (e.g., separations, reliefs, ~~letters of reprimands~~, etc.) or no action, other than closing the investigation. Recommending specific improvements to the system may also be appropriate. Remember that objectivity and professionalism must be applied to provide responsible, helpful recommendations. Unless you have brought additional items to the attention of the appointing authority and have been told others would pursue them, a recommendation for case closure is appropriate.

RCSE-MI (15-6b)

8 May 1994

MEMORANDUM FOR Captain James Ryder, Middle Recruiting Company, 1445 Silverstream
Highway, Suite 100, Tampa, FL 33607-2300

SUBJECT: Appointment as Investigating Officer (Case #)

1. APPOINTMENT: You are hereby appointed as investigating officer, pursuant to (specify the appropriate regulation, for example, USAREC Reg 601-45, chapter 3, or USAREC Reg 600-25) dated _____, to conduct an informal investigation concerning the allegation of recruiter impropriety made by _____.

(NOTE: If a commander's inquiry is conducted concerning allegations of misconduct, consult with the brigade judge advocate as to format.)

2. SCOPE OF THE INVESTIGATION: The scope of your investigation will include answers to the who, what, where, why, and how questions along with whether any recruiting personnel participated in falsifying high school transcripts in the Benson Hills Recruiting Company.

3. CONDUCT OF THE INVESTIGATION: Your investigation will use the procedures specified in AR 15-6. Read and use USAREC Pam 27-65 (Procedural Guide for the United States Army Recruiting Command Investigating Officer).

a. As a minimum, your investigation should gather relevant sworn testimony from the following individuals:

	BN	CO
(1) CPT Robert Johnson	_____	_____
(2) SGT Mike Gilmartin	_____	_____
(3) SFC Steven Cosban	_____	_____
(4) SFC Johnny Rios	_____	_____
(5) Mr. J. Groskopf	_____	_____

b. There are no respondents.

c. If, in the course of your investigation, you suspect certain persons may have committed criminal misconduct, including alleged recruiting improprieties as described in USAREC Reg 601-45, or otherwise in the Uniform Code of Military Justice (see Manual for Courts-Martial, 1984), you will advise those persons

Figure 1. Example format of appointment memorandum

RCSE-MI

SUBJECT: Appointment as Investigating Officer (Case #)

of their rights to remain silent and to counsel (UCMJ, Article 31, and U.S. Constitution, as appropriate), prior to asking those individuals any questions. For any offense other than alleged recruiting improprieties being investigated by you, immediately upon completion of your questioning of that witness, the misconduct should be reported telephonically to the brigade judge advocate at _____ .

d. Witnesses specified in USAREC Pam 27-65, paragraph 7c(3), will be provided a copy of USAREC Fm 722, Privacy Act Statement, prior to solicitation of any personal information such as name, social security number, residence address, or telephone number.

e. You will contact the brigade judge advocate, Headquarters, U.S. Army _____ Recruiting Brigade, for legal advice concerning your duties as investigating officer.

4. FINDINGS AND RECOMMENDATIONS: Your specific findings and recommendations pertaining to those questions and issues described in paragraph 2 will be submitted, along with the appropriate narrative, in the format prescribed by USAREC Pam 27-65. An original and two copies of your completed investigation will be submitted to me NLT COB _____ .

FOR THE COMMANDER:

JOHN S. MARSHALL
MAJ, AR
Executive Officer

Figure 1. Example format of appointment memorandum (Continued)

PRIVACY ACT STATEMENT

(For use of this form see USAREC Pam 27-65)

DATE: _____ NAME: _____ SIGNATURE: _____

1. AUTHORITY FOR THE COLLECTION OF PERSONAL INFORMATION: Title 10, United States Code, Section 3013.

2. PRINCIPAL PURPOSES: To obtain facts and make recommendations to assist the U.S. Army Recruiting Command (USAREC) commanders in determining whether the alleged acts have been committed by and/or against USAREC personnel.

3. ROUTINE USES: Information provided is disclosed to members of the Department of Defense who have a need for the information in the performance of their duties. In addition, the information may be disclosed to government agencies outside the Department of Defense as follows:

- a. To federal, state, or local law enforcement agencies if the record indicates a violation or potential violation of law;
- b. To members of the U.S. Department of Justice when necessary in the defense of litigation brought against the Department of Defense, or against members of that department as a result of actions taken in their official capacity;
- c. To members of the U.S. Department of Justice when necessary for the further investigation of criminal misconduct; and
- d. Limited information may be made available to third parties such as members of the public as consistent with 32 Code of Federal Regulation, Section 503.3 (1987).

4. DISCLOSURE MANDATORY OR VOLUNTARY; THE EFFECT OF NOT PROVIDING INFORMATION:

- a. For Military Personnel: The disclosure of social security account numbers is voluntary. Disclosure of other personal information is mandatory subject to the limitations of Article 31, Uniform Code of Military Justice and the Fifth Amendment to the U.S. Constitution. Failure to provide mandatory disclosure information may subject you to disciplinary action.
- b. For Department of Defense Civilian Employees: The disclosure of social security account number is voluntary; however, failure to disclose other personal information not protected under the Fifth Amendment to the U.S. Constitution in relation to your position responsibilities may subject you to adverse personnel action.
- c. For All Other Personnel: The disclosure of social security account number, where requested, and other personal information is voluntary and no adverse action can be taken against you for refusing to provide information about yourself.
- d. For Individuals Warned of Their Rights Under Article 31, Uniform Code of Military Justice, or the Fifth Amendment to the U.S. Constitution: Providing the information is voluntary. Your rights under Article 31, Uniform Code of Military Justice, or the Fifth Amendment supersede this portion of the Privacy Act Statement.

USAREC Fm 722, Rev 1 Jun 94 (Previous editions will be used)

DEPARTMENT OF THE ARMY
U.S. Army Recruiting Company Middle
1445 Silverstream Highway
Parklawn, Montana 72701-1111

RC-AA-A (MARKS Number)

(DATE)

MEMORANDUM FOR Commander, U.S. Army Recruiting Battalion Middle, 1445 Silverstream Highway,
Parklawn, Montana 72701-1111

SUBJECT: Report of Investigation (ROI) (Case Number If Assigned)

1. AUTHORITY: This investigation was conducted pursuant to (specify the appropriate regulations, for example, USAREC Reg 600-25 or USAREC Reg 601-45, chapter 3,) and Memorandum of Appointment, Headquarters, U.S. Army Recruiting Battalion Middle, dated ____19 ____ (a copy of the memorandum is located at Tab A). I used the procedures specified in AR 15-6 and USAREC Pam 27-65.

2. SCOPE OF THE INVESTIGATION: (Same information as contained in paragraph 2 of the memorandum of appointment.)

3. BACKGROUND INFORMATION:

a. (This paragraph or subparagraph must be in sufficient detail to give someone unfamiliar with the allegations a clear understanding of the events that led to the investigation. It should include a chronology of major events which may be provided as an enclosure to the ROI.)

b. (Any official or unofficial relationships between the complainant(s), witnesses, and other persons should be clearly explained. For example, if several recruiters are implicated, their duty relationships with each other and the complainant(s) should be explained.)

4. DISCUSSION:

a. (Analyze the evidence in relation to each allegation listed in paragraph 2 above. Assess the credibility of each witness whose credibility could be challenged by other parties to the investigation.)

b. (When referring to witness statements or other evidence, identify the reference and its location, e.g., statement by SGT _____ (at Tab ____).)

Figure 3. Example format of an ROI

RC-AA-A

SUBJECT: Report of Investigation (ROI) (Case Number If Assigned)

5. FINDINGS: (State whether each allegation or issue in paragraph 2 above is substantiated. Apply the preponderance of evidence standard described by AR 15-6, paragraph 3-9b. The findings must be supported by the discussion paragraph and must lead to a logical conclusion.)

6. RECOMMENDATION(S): (Such recommendations as are pertinent to the allegations (issues) described in paragraph 2 of the memorandum of appointment should be clearly and concisely stated. Each recommendation, even a negative one (e.g., that no further action be taken), must be supported by the findings. See also, AR 15-6, paragraph 3-9.)

49 Encls

1. Index of ROI Tabs

2-49. as on encl 1

FIRST MI LAST

RANK, BRANCH

Investigating Officer

Figure 3. Example format of an ROI (Continued)

INDEX OF ROI TABS

(Note: For investigation of alleged RI)

<u>TAB</u>	<u>SUBJECT</u>
A	Memorandum of appointment (with enclosures).
B	Sworn Statement of Recruiter.
Next Tab	Sworn Statement of Station Commander. (Note: Each sworn statement (DA Form 2823) should be tabbed separately. The list of witnesses is by way of illustration only.)
Next Tab	Sworn Statement of Guidance Counselor.
Next Tab	Sworn Statement of Applicant.
Next Tab	Sworn Statements of other relevant witnesses.
Next Tab	All necessary DA Forms 3881 (Rights Warning Procedure/Waiver Certificate) (as appropriate, execute with each sworn statement).
Next Tab	All necessary USAREC Fms 722 (Privacy Act Statement).
Next Tab	DD Form 4/1 and 4/2 (Enlistment/Reenlistment Document).
Next Tab	DD Forms 1966 (Application for Enlistment).
Next Tab	USAREC Fm 200-C (Prospect Data Record).
Next Tab	DD Form 369 (Police Record Check).
Next Tab	USAREC Fm 1037 (Probation Officer and/or Court Records Report).
Next Tab	SF 88 (Report of Medical Examination).
Next Tab	SF 93 (Report of Medical History).
Next Tab	Relevant court documents.
Next Tab	Chronology of major events leading to and during the investigation.

Encl 1

Figure 3. Example format of an ROI (Continued)

DEPARTMENT OF THE ARMY
U.S. Army Recruiting Company Sample

RC-FS (MARKS Number)

12 October 19 ____

MEMORANDUM FOR Commander, U.S. Army Recruiting Battalion

SUBJECT: Report of Investigation (ROI) (8X8X/0999)

1. AUTHORITY: This investigation was conducted pursuant to USAREC Reg 601-45, chapter 3, and Memorandum of Appointment, Headquarters, U.S. Army Recruiting Battalion Fort Sheridan, dated 30 September 19 ____ (Tab A).

2. SCOPE OF INVESTIGATION: The scope of the investigation includes answers to who, what, when, where, why, and how questions, along with answers to the following issues:

Did SFC Recruiter intentionally falsify, cause to be falsified, or through gross negligence, omit any pertinent data or information which is required to be entered on any enlistment document, i.e., SF 93 and/or DD Form 2246?

3. BACKGROUND INFORMATION:

a. Chronology of events (a more detailed chronology is at Tab Q) -

- 3 Aug -- Mr. Applicant allegedly hurts his back.
- 15 Sep -- SFC Recruiter makes an appointment with Mr. Applicant.
- 17 Sep -- Initial appointment conducted, DD Form 2246 and DD Form 1966 completed.
- 24 Sep -- Applicant no shows for physical.
- 27 Sep -- Applicant makes allegation during security interview.
- 30 Sep -- IO appointed.
 - Begin investigation.
- 10 Oct -- Complete investigation.
- 12 Oct -- Submit ROI.

Figure 4. Example of a good ROI

SUBJECT: Report of Investigation (ROI) (8X8X/0999)

b. On 27 September 19 ____, an RA enlistee, Mr. Applicant, alleged during a security briefing at the Fort Sheridan MEPS, that SFC John D. Recruiter had advised him to say nothing about a strained lower back muscle. Mr. Applicant stated that SFC Recruiter told him not to reveal his back problem if nothing came up during his physical at the MEPS.

4. DISCUSSION:

a. On 27 September 19 ____ during a security briefing with SSG Smith at the MEPS, Mr. Applicant alleged that SFC Recruiter advised him not to mention a back problem that had occurred on or about 1 August 19 ____ (Tabs B and I).

b. In his sworn statement (Tab B), Mr. Applicant said he originally had doubts about the 6-year enlistment that he would incur, but had resolved those doubts before going to the Fort Sheridan MEPS. He was now eager to go on active duty and was concerned that this incident would slow his processing (Tabs J and K). There is no motive for Mr. Applicant to lie in his sworn statement. Mr. Applicant was calm and relaxed during my interview and appeared to be completely credible.

c. Mr. Applicant said that he had seen a doctor for his back on or about 3 August; he had missed about 3 days from work and was taking medication for his back. I asked Mr. Applicant why had he checked "no" for "back strain" on his DD Form 2246 (Tab M). Mr. Applicant said that SFC Recruiter told him not to worry about it since it wouldn't show up on an X-ray. According to Mr. Applicant, he and SFC Recruiter had discussed the back strain before he signed the DD Form 2246.

d. I then asked Mr. Applicant for medical records that would show the dates and substantiate the fact that he had indeed seen a doctor prior to his interview with SFC Recruiter. Mr. Applicant said that he did not have medical records because he had to turn them in to his insurance company. He signed a release for medical records and provided receipts for prescriptions given to him for his back (Tab C). The date on the prescription receipts are 5, 10, and 22 August. The medical records (Tab N) indicate Mr. Applicant was seen on 5 and 22 August for a back injury. The interview between SFC Recruiter and Mr. Applicant took place on 17 September 19 ____ (USAREC Fm 200-C, Tab D). I talked to Ms. Employer, who confirmed Mr. Applicant was on sick leave 5-7 August (Tab G).

e. On 30 September 19 ____, I informed SFC Recruiter of the allegation that he had told Mr. Applicant to conceal a back problem. He denied the allegation (Tab E). SFC Recruiter declined to answer further questions on the advice of his defense counsel (Tab F).

SUBJECT: Report of Investigation (ROI) (8X8X/0999)

f. I talked to SGT Mandays who was helping out in the recruiting station on 17 September 19____, when Mr. Applicant first came in. In his statement (Tab H), he says he heard Mr. Applicant tell SFC Recruiter he had strained his back. SFC Recruiter told him he should put it down only if he had seen a doctor and had X-rays to prove the injury.

g. The only other recruiter assigned to this recruiting station, SSG Brown, was not in the office during Mr. Applicant's interview.

h. This case is essentially a believability question. Mr. Applicant has no reason to lie. SGT Mandays corroborates Mr. Applicant's story. SFC Recruiter needed this applicant to make mission box. He was sent to MEPS on the last day of the RSM. If he waited until he obtained documentation Mr. Applicant could not enlist that month.

i. In April of this year, SFC Recruiter received a general officer written reprimand for a similar impropriety. Under the circumstances of this case and in light of his previous impropriety, SFC Recruiter could not reasonably have believed that evidence of medical treatment was a prerequisite to reporting a physical injury as a potential disqualification.

5. FINDINGS: SFC John D. Recruiter wrongfully assisted in the concealment of a potential enlistment medical disqualification in violation of USAREC Reg 601-45, paragraph 2-2e(1).

6. RECOMMENDATION: I recommend that SFC Recruiter be relieved, reclassified, and reassigned from USAREC.

29 Encls
1. Index of ROI Tabs
2-29. as on encl 1

I.M. Investigator
CPT, AG
Investigating Officer

INDEX OF ROI TABS

<u>TAB</u>	<u>SUBJECT</u>
Tab A	Memorandum of Appointment.
Tab B	Sworn Statement of Mr. Applicant.
Tab C	Copies of receipts: <ul style="list-style-type: none">- Prescription Receipt 5 Aug ____.- Prescription Receipt 10 Aug ____.- Prescription Receipt 22 Aug ____.
Tab D	USAREC Fm 200-C (Prospect Data Record), Mr. Applicant.
Tab E	MFR of conversation with SFC Recruiter.
Tab F	DA Form 3881 (Rights Warning Procedure/Waiver Certificate), SFC Recruiter.
Tab G	Statement of Ms. Employer.
Tab H	Sworn Statement of SGT Mandays.
Tab I	Sworn Statement of SSG Smith, Security Interviewer.
Tab J	Sworn Statement of SFC Jones, Guidance Counselor.
Tab K	Sworn Statement of MSG Williams, Senior Guidance Counselor.
Tab L	Sworn Statement of SSG Brown.
Tab M	DD Form 2246 (Applicant Medical Prescreening Form), Mr. Applicant.
Tab N	Mr. Applicant's medical documents: <ul style="list-style-type: none">- SF 88 (Report of Medical Examination).- SF 93 (Report of Medical History).- Doctor's reports dated 5 Aug and 22 Aug.
Tab O	DD Forms 1966 (Application for Enlistment), Mr. Applicant.
Tab P	All USAREC Fms 722 (Privacy Act Statements).
Tab Q	Chronology of events. [An abbreviated chronology was provided in paragraph 3a in the ROI. When necessary, a more detailed chronology should be provided as a Tab.]

Encl 1

Figure 4. Example of a good ROI (Continued)

DEPARTMENT OF THE ARMY
U.S. Army Recruiting Company Sample

RC-FS (601-210e)

21 October 19 ____

MEMORANDUM FOR Commander, U.S. Army Recruiting Battalion

SUBJECT: Report of Investigation - SFC John D. Recruiter

1. AUTHORITY: This investigation was conducted pursuant to Chapter 3, USAREC Reg 601-45, and the Headquarters, U.S. Army Recruiting Battalion Fort Sheridan Memorandum of Appointment, dated 30 September 19 __ , (Tab A).

2. SCOPE OF INVESTIGATION: The scope of the investigation includes answers to WHO, WHAT, WHEN, WHERE, WHY, and HOW questions, along with answers to the following issues:

- a. Did SFC John D. Recruiter use documents, to wit, DD Form 2246, in Mr. Applicant's enlistment process that were falsified by or with knowledge of SFC Recruiter?
- b. Did SFC Recruiter falsify or assist in falsification of any documentation, i.e., SF 93 or DD 2246, pertaining to Mr. Applicant's qualifications for any enlistment option, bonus, or benefit?
- c. Did SFC Recruiter counsel Mr. Applicant to falsify or process Mr. Applicant knowing that information was falsified regarding eligibility (physical)?
- d. Did SFC Recruiter intentionally falsify, cause to be falsified, or through gross negligence omit any pertinent data or information which is to be entered on any enlistment document, i.e., SF 93 and/or DD 2246?
- e. Did SFC Recruiter willfully enter any false or misleading data on any USAREC, U.S. MEPCOM, Army, or DOD form, i.e., SF 93, DD 2246, or direct Mr. Applicant to enter such false or misleading data?

3. BACKGROUND INFORMATION:

- a. On 27 September 19 __ , an RA enlistee, Mr. Applicant, during a security briefing at the Fort Sheridan MEPS, alleged that SFC John D. Recruiter had advised him to say nothing about a lower back

Figure 5. Example of a poor ROI

SUBJECT: Report of Investigation - SFC John D. Recruiter

muscle problem. Mr. Applicant stated that SFC Recruiter told him not to reveal his back problem if nothing came up in the physical that was to be conducted at the MEPS.

b. SFC John Recruiter denied that he informed Mr. Applicant to mention the back problem only if Mr. Applicant thought it was serious or if Mr. Applicant had seen a doctor.

c. There were no witnesses to substantiate the conversation between SFC Recruiter and Mr. Applicant. The only person present during the interview was SGT Mandays.

4. DISCUSSION:

a. On 27 September 19 ____, during a security briefing at the MEPS, Mr. Applicant alleged that SFC Recruiter advised him not to mention a back strain that had occurred on or about 1 August 19 ____.

b. In a telephone interview with Mr. Applicant, I concluded there were no apparent reasons for him to lie during the security briefing. He had doubts about the 6-year enlistment that he would incur.

c. Mr. Applicant said that he had seen a doctor for his back around 3 August; he had missed about 3 days from work and was taking medication for his back. I asked Mr. Applicant why had he checked "no" for "back strain." Mr. Applicant responded that SFC Recruiter said don't worry about it since it was just a back strain. According to Mr. Applicant, he and SFC Recruiter had discussed the back strain before signing the DD Form 2246.

d. I then asked Mr. Applicant for proof to show that he had seen a doctor prior to his interview with SFC Recruiter. Mr. Applicant informed me that he did not have receipts because he had to turn them in for reimbursement.

e. On 28 September 19 ____, I informed SFC Recruiter of the allegation that Mr. Applicant had made. SFC Recruiter stated that Mr. Applicant had not informed him of a back problem. He then declined to say anything else after talking to defense counsel.

f. SGT Mandays didn't answer his telephone when I called at 1300 on 29 September, so there is no statement from him.

SUBJECT: Report of Investigation - SFC John D. Recruiter

g. It appears that Mr. Applicant was coached not to mention the back problem since he had no way of knowing what could or couldn't disqualify him for enlistment.

h. There is no substantiated evidence in this case, but there are substantiated motives for SFC Recruiter to misguide Mr. Applicant. SFC Recruiter needed Mr. Applicant to help make mission. SFC Recruiter has failed to make a statement.

5. FINDINGS:

a. SFC John D. Recruiter did falsify documents, to wit, DD Form 2246, in Mr. Applicant's enlistment process.

b. Due to consistent allegations against SFC Recruiter, recommend that he be relieved, reclassified, and reassigned outside of USAREC.

c. SFC Recruiter did counsel Mr. Applicant to falsify and processed Mr. Applicant knowing that the information was false regarding eligibility (physical).

d. SFC Recruiter intentionally falsified, caused to be falsified, and through gross negligence omitted pertinent data and information which was to be entered on enlistment documents, SF 93, and DD Form 2246.

6. RECOMMENDATION: In April of this year, SFC Recruiter received a General Officer Written Reprimand for similar allegations. I feel that SFC Recruiter has exhausted his chances of remaining a recruiter within USAREC.

2 Encl
TABS A-B

I.M. Investigator
CPT, AG
Investigating Officer

CRITIQUE

Problems with this investigation:

- No sworn statements.
- Telephone interviews were used instead of face-to-face interviews. Face-to-face interviews should be conducted whenever possible considering time, distance, and the criticality of the witness. Mere inconvenience cannot excuse failing to interview material witnesses in person. If a material witness has moved away, ask the appointing authority to request support from another recruiting company or recruiting battalion. Telephone interviews may be conducted only when it is clearly impractical to conduct a face-to-face interview.
- Using evidence not in the file in discussions and findings.
- Inferring guilt solely from invocation of rights.
- Failure to include documentary evidence (USAREC Fm 200-C, DD Form 1966, and DD Form 2246, etc.).
- Failure to interview other witnesses such as security interviewer, guidance counselor, or others in the recruiting station.
- Some conclusions (e.g., credibility of Mr. Applicant) were inadequately supported by evidence in the file. In fact, there is no evidence to corroborate Mr. Applicant's statement that he had strained his back and that he told SFC Recruiter about the injury.
- Failure to adequately support the recommendations. Not every RI warrants relief. In this case, although SFC Recruiter declined to make a statement, he might have mistakenly believed that medical documentation was needed before reporting the injury. A better investigation could have resolved this issue.
- The scope of the investigation (paragraph 2 of the ROI) usually is a restatement of the instructions by the appointing authority. An overly detailed appointing order is not "wrong" but may inadvertently constrict the investigation. The appointing order should describe the general parameters of the investigation, and the IO should ensure that specific instances of wrongful conduct are investigated. For these reasons, the general scope paragraph used as an example in the "good" investigation is preferred.
- Format of the investigation is not correct.

Encl 1

Figure 5. Example of a poor ROI (Continued)

Appendix A References

Section I Related Publications

AR 15-6

Procedures for Investigating Officers and Boards of Officers.

AR 27-10

Military Justice.

AR 190-40

Serious Incident Report.

AR 195-2

Criminal Investigation Activities.

AR 340-21 with USAREC Suppl 1 thereto

The Army Privacy Program.

AR 600-8-2

Suspension of Favorable Personnel Actions (Flags).

AR 600-37

Unfavorable Information.

AR 601-1

Assignment of Enlisted Personnel to the U.S. Army Recruiting Command.

AR 601-210

Regular Army and Army Reserve Enlistment Program.

UCMJ

Uniform Code of Military Justice.

USAREC Reg 27-2

Legal Services Support for the United States Army Recruiting Command.

USAREC Reg 190-3

Procedures in Drunk Driving Cases.

USAREC Reg 600-22

Assignment of Enlistment Processing Responsibility.

USAREC Reg 600-25

Prohibited and Regulated Activities.

USAREC Reg 601-45

Recruiting Improprieties Policies and Procedures.

Section II Required Form

USAREC Fm 722

Privacy Act Statement.

Section III Related Forms

DA Form 1574

Report of Proceedings by Investigating Officer/Board of Officers.

DA Form 2823

Sworn Statement.

DA Form 3881

Rights Warning Procedure/Waiver Certificate.

DD Form 2246

Applicant Medical Prescreening Form.

SF 88

Report of Medical Examination.

SF 93

Report of Medical History.

USAREC Fm 200-C

Prospect Data Record.

USMEPCOM Form 714A

Request for Examination.

Appendix B

Examples of Statements and Documentation

The following are provided as examples of statements and documentation normally required for different types of allegations. These examples are not intended to be all inclusive, but are furnished as guidelines for the IO during the conduct of the investigation.

a. ALLEGATION: CONCEALED POLICE RECORDS.

- (1) Statements should be taken from:
 - (a) Applicant and any witnesses provided by applicant such as family members, etc.
 - (b) Recruiter, station commander, guidance counselor, and security interviewer.
 - (c) Probation officer, district attorney, lawyers, judges (if any).
 - (d) If records checks were run or should have been run, take statement from records clerk of law enforcement agency.
 - (e) Any one else mentioned that may have information concerning the case.

(2) The following documents should be included:

- (a) Residual file and 200 card (mandatory).
- (b) Police and court checks and/or dockets (previously completed checks should be validated by phoning the law enforcement agency or court to verify that the information is accurate). If no court or police records check were done by the recruiter, the IO will need to run the checks. Include any separate files that the district attorney's office may have.

b. ALLEGATION: CONCEALED MEDICAL RECORDS.

- (1) Statements should be taken from:
 - (a) Applicant and any witnesses provided by applicant such as family members, etc.
 - (b) Recruiter, station commander, and guidance counselor.
 - (c) Doctors or staff members such as receptionists at civilian medical facilities, as needed.
 - (d) Coach, school nurse, if appropriate.
- (2) The following documents should be included:

- (a) Residual file and 200 card (mandatory).
- (b) SF 88 (Report of Medical Examination) and SF 93 (Report of Medical History).
- (c) DD Form 2246 (Applicant Medical Pre-screening Form).
- (d) Medical records from civilian medical facilities. If not obtained by the recruiter, the IO will have to obtain these records.

c. ALLEGATION: FALSE DOCUMENTS (High School Diploma or Transcripts).

- (1) Statements should be taken from:
 - (a) Applicant and any witnesses provided by applicant such as family members, etc.
 - (b) Recruiter, station commander, and guidance counselor.
 - (c) School administrators, guidance counselor, and/or principals.
 - (d) Individual who allegedly prepared the document.

(e) Print shop owners in the recruiting station area (determine if recruiters are visiting his or her business, and for what purpose).

(2) The following documents should be included:

- (a) Residual file and 200 card (mandatory).
- (b) Bogus diploma or transcript.
- (c) Copy of an authentic diploma or transcript from the institution in question.
- (d) Results of residual packet check of the involved recruiter and station to determine if other falsified diplomas or transcripts exist.

d. ALLEGATION: RINGER.

- (1) Statements should be taken from:
 - (a) Applicant and any witnesses provided by applicant such as family members, etc.
 - (b) Recruiter, station commander, and guidance counselor.
 - (c) Ringer, if identified by the applicant.
 - (d) Other recruiters in the station.
 - (e) Test administrator.
- (2) The following documents should be included:

- (a) Residual file and 200 card (mandatory).
- (b) USMEPCOM Form 714A (Request for Examination).
- (c) Handwriting exemplars from the applicant.
- (d) Thumbprint(s) to match with the original USMEPCOM Form 714A.

(e) Results of the check of the residual packets from the recruiter and station involved to determine if any evidence exists of other ringer use.

(f) Results of the Computerized Adaptive Screening Test obtained from the recruiter disk for his or her Joint Optical Information Network computer or the Enlistment Screening Test scoresheet.

(g) Results of confirmation Armed Services Vocational Aptitude Battery or Computerized Adaptive Screening Test, if available.

(h) Results of Student Armed Services Vocational Aptitude Battery.

(i) Copy of identification used to take the test.

e. ALLEGATION: SOCIAL RELATIONSHIP WITH MEMBER OF THE DELAYED ENTRY PROGRAM (DEP).

- (1) Statements should be taken from:
 - (a) DEP member and any witnesses provided by DEP member such as family members, classmates, or other DEP members.
 - (b) Recruiter, station commander, and other recruiters in the station who may have noticed relationship.

(c) Individuals who may have witnessed the social relationship, depending on the allegation (i.e., hotel employees, janitor, neighbors, etc.).

(2) The following documents should be included:

- (a) Residual file and 200 card (mandatory).
- (b) Personal correspondence to and from the recruiter.

(c) Depending on the situation, pictures, receipts, or paternity documents.

The executive officer is the "first-line" expert at

recruiting battalion level. The IO should feel free to talk with the executive officer or the brigade judge advocate for assistance during the conduct of and/or prior to the submission of the investigation. A thorough, complete product should be the result.